BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ERIN MILLER-WIGGINS, Claimant, vs. CASEY'S MARKETING COMPANY, Employer, and EMCASCO INSURANCE CO., Insurance Carrier, Defendants.	File No. 1654971.02 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 2701

STATEMENT OF THE CASE

On October 27, 2020, claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The defendants filed an answer on November 5, 2020,

The undersigned presided over the hearing held via telephone and recorded digitally on November 6, 2020. That recording constitutes the official record of the proceeding under 876 Iowa Administrative Code 4.48(12). Claimant participated through her attorney, Benjamin Roth. The defendants participated through their attorney, John Cutler. The evidentiary record consists of 12 pages of exhibits from the claimant, labeled 1 through 5, and 7 pages of exhibits from the defendants labeled A through C.

On February 16, 2015, the Iowa Workers' Compensation Commissioner issued an order delegating authority to Deputy Workers' Compensation Commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a district court pursuant to Iowa Code 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to alternate care under Iowa Code 85.27(4) in the form of care recommended by claimant's doctors.

FINDINGS OF FACT

Claimant, Erin Miller-Wiggins, sustained a work injury to her neck and right shoulder on October 4, 2018. The work incident arose out of, and in the course of her

employment with Casey's Marketing Company. Defendants accepted liability for the October 4, 2018, neck and right shoulder injuries in their answer, and verbally at hearing.

Ms. Miller-Wiggins received limited treatment for her initial work injuries. She proceeded to request additional care in the spring of 2019. In July of 2019, the defendants sent Ms. Miller-Wiggins for an independent medical examination (IME), and subsequently indicated no further care would be authorized. In August of 2019, CCMSI, the third party administrator (TPA) for the defendants sent claimant's counsel a letter indicating that based upon the IME, ongoing medical care would be the claimant's personal responsibility. (Exhibit 4). The letter concluded with the TPA stating "[s]hould you have any questions, please contact me." (Ex. 4). Ms. Miller-Wiggins moved to Pueblo, Colorado in the interim. She sought care with Jennifer FitzPatrick, M.D., and Jack Chapman, M.D., on her own volition, after moving to Colorado.

The claimant visited Dr. Chapman on August 11, 2020, for a two-week follow up after cervical facet and interlaminar injections. (Ex. 1). The injections helped somewhat. (Ex. 1). Dr. Chapman opined that Ms. Miller-Wiggins' clinical picture was complicated by her shoulder pain and neuropathic pain of the face. (Ex. 1). The global pandemic caused an interruption to the claimant's physical therapy. (Ex. 1). Dr. Chapman assessed Ms. Miller-Wiggins with cervicalgia, cervical radiculopathy, cervical radiculopathy due to degenerative joint disease of the spine, neural foraminal stenosis of the cervical spine, cervical facet joint syndrome, and cervical spondylosis. (Ex. 1). Dr. Chapman recommended that the claimant follow up on physical therapy. (Ex. 1). He also indicated that if axial pain recurred, "facet RFA," which appears to mean radiofrequency ablation, may be necessary. (Ex. 1). Dr. Chapman concluded that a repeat epidural injection may also be required. (Ex. 1).

The claimant visited Dr. FitzPatrick on September 21, 2020, for an examination of her right shoulder. (Exhibit 2). Ms. Miller-Wiggins had right shoulder pain with no evidence of a full-thickness rotator cuff tear, per the results of an MRI. (Ex. 2). The claimant attempted a trial of physical therapy for her right shoulder that did not help. (Ex. 2). She deferred on an injection, as she experienced negative side effects in the past. (Ex. 2). Dr. FitzPatrick assessed Ms. Miller-Wiggins with biceps tendonitis of the right shoulder, and internal impingement of the right shoulder. (Ex. 2). Ms. Miller-Wiggins expressed a desire to undergo a right shoulder arthroscopic biceps tenodesis and subacromial decompression for her right shoulder complaints. (Ex. 2).

On September 22, 2020, claimant's attorney e-mailed the TPA asking if the letter from August 6, 2019, meant that the claim was denied. (Ex. 4). The claimant's attorney further indicated that Dr. FitzPatrick scheduled a surgery for Ms. Miller-Wiggins on October 13, 2020, and requested the defendants' stance regarding causal relationship. (Ex. 4). The TPA responded indicating that their stance was that Ms. Miller-Wiggins reached maximum medical improvement, and ongoing medical care was Ms. Miller-Wiggins' personal responsibility. (Ex. 4). However, the TPA noted that claimant's counsel should submit any additional information pertaining to a reconsideration. (Ex. 4). Claimant's counsel pressed the TPA further and asked if the claim was denied and whether the defendants would seek an authorization defense. (Ex. 4). The TPA

responded on September 28, 2020, that the claim had not been denied, but that they authorized no further care based upon the IME results. (Ex. 4). On October 12, 2020, the claimant's counsel e-mailed the TPA again indicating that they served medical records on the TPA and requesting authorization for a right bicep tenodesis and subacromial decompression recommended by Dr. FitzPatrick and additional care for the claimant's neck by Dr. Chapman. (Ex. 3).

Counsel for the defendants e-mailed a letter to the claimant's counsel on October 26, 2020, indicating that they accepted compensability of the claimant's shoulder and neck conditions. (Ex. A). Counsel noted that the defendants were not notified of any treatment received by the claimant until "very recently." (Ex. A). In both the letter to claimant's counsel, and at the hearing, counsel for the defendants indicated that it was not until October 12, 2020, that they had substantive information required to evaluate the claim. (Ex A). Counsel for the defendants further noted in the letter, and at hearing, that Pueblo, Colorado, is a smaller city, and locating a provider would require some effort. (Ex. A). However, the defendants found a doctor, and authorized treatment with Thomas Centi, M.D., a doctor specializing in occupational medicine. (Ex. A and Ex. C).

Counsel for the claimant argued at the hearing that requiring the claimant to cease care with Dr. FitzPatrick and Dr. Chapman in favor of Dr. Centi would require the claimant go to a lower level of care because Dr. Centi specializes in occupational medicine, while Dr. FitzPatrick and Dr. Chapman specialize in orthopedics and pain management, respectively. Counsel for Ms. Miller-Wiggins further argued that moving care to Dr. Centi would result in an unnecessary delay in the claimant's care since she already has established relationships and treatment plans with Drs. FitzPatrick and Chapman. Finally, the claimant's counsel argued that the COVID-19 numbers are increasing in the Pueblo, Colorado, area. (Exhibit 5). Claimant's counsel postulated that this may result in a suspension of elective surgeries, which would delay the claimant's requested surgery. In the alternative to authorizing treatment with Drs. FitzPatrick and Chapman, the claimant's counsel suggested that the defendants be required to find an orthopedic specialist and pain management doctor and schedule an appointment with them for Ms. Miller-Wiggins within 30 days.

Counsel for the defendants argued that they only recently received the medical records from the claimant indicating further care was requested. They also asserted that the defendants maintain their right to control and direct care. Defendants' counsel also argued that they authorized care with Dr. Centi as soon as they could perform a reasonable investigation of the claimant's medical records, and find a provider in the Pueblo, Colorado, area.

CONCLUSIONS OF LAW

Iowa Code 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care . . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the

> employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers." Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 202, 207 (Iowa 2010); IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

Under the law, the employer must furnish "reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original)). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armtrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

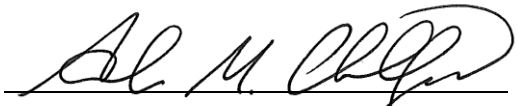
The claimant appears to have sought treatment for some time before reaching out to the defendants' TPA. It was not until October 12, 2020, that medical records indicating that the claimant sought medical care from Drs. FitzPatrick and Chapman were produced. The claimant sought care from these doctors without consulting the defendants. The defendants never denied liability for the injury or treatment. In fact, the TPA requested that the claimant provide additional information for a reconsideration of authorization of care in late September of 2020.

I am empathetic that the claimant has established relationships with Drs. FitzPatrick and Chapman, and is concerned about a delay of care if she is referred to Dr. Centi. However, the defendants did not dispute the compensability of Ms. Miller-Wiggins' injury. They were never given the opportunity to authorize care in Colorado until after Ms. Miller-Wiggins was already treating in Colorado. Simply sending the TPA an e-mail for clarification on the TPA's stance regarding medical care is not enough to show that the defendants did not promptly arrange or authorize care. After being told of the claimant's desire to have care in Colorado, the defendants reviewed and investigated the medical records provided. The defendants then authorized care with Dr. Centi. I find that after receiving notice of the claimant's request for care, the defendants promptly arranged for care. Furthermore, the defendants retain the right to control care. Dr. Centi is a specialist in occupational medicine, and thus would be reasonably suited to treat the claimant. The claimant's argument that COVID-19 may halt elective surgeries and therefore endanger the timely treatment with defendants' chosen providers is speculative, at best. The claimant has not proven that the care authorized by the defendants is unreasonable. The claimant also has not proven that the defendants taking no action prior to October 12, 2020, or even September 22, 2020, was unreasonable. The defendants cannot be expected to be omniscient as to the treatment sought by the claimant without their knowledge.

IT IS THEREFORE ORDERED:

1. The claimant's petition for alternate care is denied.

Signed and filed this 6th day of November, 2020.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Benjamin R. Roth (via WCES)

John S. Cutler (via WCES)